

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kelvin Jerome Miles,

Case No. 21-CV-0932 (SRN/HB)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Director – Bureau of Prisons; Bureau of
Prisons; and S. Warden Kallis, Federal
Medical Center,

Defendants.

In an Order dated April 7, 2021, this Court directed Plaintiff Kelvin Jerome Miles, a federal prisoner, to pay an initial partial filing fee of \$350.00 consistent with 28 U.S.C. § 1915(b). [ECF No. 3.] Miles was at first given 20 days to pay this initial partial filing fee, failing which (he was warned) it would be recommended that this action be dismissed without prejudice for failure to prosecute. (*See* Order at 3–4 (citing Fed. R. Civ. P. 41(b)).) The deadline for payment of the initial partial filing fee was later extended to May 14, 2021. [ECF No. 8.]

That extended deadline has now passed, and Miles has not paid the required initial partial filing fee. In fact, Miles has not communicated with the Court about this case at all since the deadline for paying the filing fee was extended. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A

district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Based upon the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED THAT:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs [ECF No. 2] be **DENIED AS MOOT**.
3. Plaintiff's Motion to Amend Complaint [ECF No. 6] be **DENIED AS MOOT**.

Dated: May 24, 2021

s/ Hildy Bowbeer

Hildy Bowbeer

United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).